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Via Electronic Filing

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

Re: Ex Parte Communication
In the Matter of Rural Call Completion - WC Docket No. 13-39

Dear Ms. Dortch:

This submission is made on behalf of CarrierX, LLC, d/b/a freeconferencecall.com ("Free Conferencing") and HD Tandem to correct the record related to issues raised in the Reply Comments of Inteliquent, Inc. ("Inteliquent") filed on June 19, 2018 in the instant docket. Inteliquent purportedly filed Reply Comments in response to the *Second Report and Order* and *Third Further Notice of Proposed Rulemaking* ("FNPRM") in the rural call completion proceeding, but Inteliquent's Reply Comments are in essence a pleading more properly filed in a federal district court.

Inteliquent is currently engaged in litigation with Free Conferencing and HD Tandem in the United States District Court for the Northern District of Illinois. To respond to the unsupportable and misleading statements in Inteliquent's "Reply Comments," and provide accurate information to the Commission on the issues raised on the broader issue of rural call completion, Free Conferencing has obtained leave from the Court to provide to the Commission information in certain internal documents produced by Inteliquent in the litigation.

Although entitled "Reply Comments," Inteliquent's submission is more properly understood as an inappropriate effort to use the FCC's regulatory proceeding to exert pressure in its ongoing litigation. The Commission should strike those Reply Comments or, in the alternative, review this ex parte with an eye toward uncovering a T-Mobile/Inteliquent scheme to suppress calls to rural areas and obscure Inteliquent's involvement in a fraudulent traffic scheme in violation of the Communications Act of 1934.

1. Inteliquent's Untruths About Free Conferencing's Alleged "Traffic Pumping Scheme"

As a preliminary matter, it is important for the Commission to note that Inteliquent's characterization of Free Conferencing as engaged in a "traffic pumping scheme" is fundamentally misleading. Free Conferencing has and continues to be a customer of Inteliquent. Inteliquent has been doing business with Free Conferencing since 2012. Free Conferencing purchases telephone numbers from Inteliquent associated with a variety of geographic locations. Inteliquent charges other carriers for connecting calls to Free Conferencing numbers, and Inteliquent subsequently *shares a percentage of the revenue it receives from other carriers with Free Conferencing*. Inteliquent thus fits squarely in the old-fashioned black and white definition of "access stimulator" it insists on using. Its own business is the same as "access stimulation schemes" about which it complains.

Inteliquent also takes issue with Free Conferencing's relationship with HD Tandem because HD Tandem provides Inteliquent with competition in the market for tandem connection services. The revenue sharing relationship between Inteliquent and Free Conferencing is not unlike Inteliquent's relationship with many other end-user applications. Inteliquent's entire submission should be colored by the view that in Inteliquent's world, access stimulation is wrong only when it does not involve or profit Inteliquent.

2. Inteliquent's Contract With T-Mobile

After discussing what it calls the "harm of evolving traffic pumping schemes" that are part of Inteliquent's own business offerings, Inteliquent's Reply Comments then go on to provide misleading information about the federal court litigation, citing unsupported allegations. That pleading, and the Reply Comments which cite it, are flatly inconsistent with Inteliquent's emails and other records produced in the District Court matter.

The current litigation arose as a result of a contract Inteliquent entered into with T-Mobile. On August 17, 2015, Inteliquent announced that it had entered into an agreement with T-Mobile. Under their contract, T-Mobile agreed to generally use Inteliquent as its sole provider of voice interconnection services for all calls exchanged between T-Mobile and nearly all other voice providers in the United States. In essence, Inteliquent contracted to be the intermediate carrier responsible for the termination of T-Mobile's traffic. At the time, T-Mobile was actively promoting its unlimited calling and data plans, and T-Mobile was thus especially attractive to retail and business customers who utilize "free" conferencing services like Free Conferencing.

On September 25, 2015, Inteliquent's Chief Executive Officer sent an email to senior managers asking, "Are the [T-Mobile] economics coming in as forecast?" There

then followed this email exchange, which identified the inaccurate traffic profile provided by T-Mobile as the cause of the poor financial return for Inteliquent under its contract with T-Mobile:

John Schoder, Inteliquent Chief Marketing Officer, 9/25/15, 2:45 p.m.:

If you are asking as it relates to the business case, currently the answer is no. > I had a call earlier this afternoon with Emily and a number of other folks where we looked at the latest forecast vs. the business case. We started the meeting with a (\$5M) margin delta to the original case. By layering on variable and fixed cost savings we are working on as well as refining assumptions around wholesale LD we improved the case so that we are now looking at a (\$2M) delta.

We will continue to work on initiatives to try and close that gap. Several are identified but it is too early to assign numbers to...

Matt Carter, Chief Executive Officer, 9/25/15, 4:05 p.m.:

And the negative delta is caused by....?

John Schoder, Inteliquent Chief Marketing Officer, 9/25/15, 4:50 p.m.:

[T]he ongoing drag is that the profile of the [long distance] traffic weighs more heavily towards high cost codes such as Free Conferencing's entities than the traffic profile [T-Mobile] provided.

T-Mobile and Inteliquent have not publicly disclosed the rate structure of their contractual arrangements. The statement by Inteliquent's Chief Marketing Officer that the "ongoing drag" on profitability arose from heavier traffic from "high cost codes such as Free Conferencing's," however, makes clear that Inteliquent concluded within months of announcing its T-Mobile contract that the rates negotiated by Inteliquent for that contract were not going to generate the financial performance it expected. Inteliquent's Board of Directors became so concerned about the "traffic profile" and profitability of the T-Mobile contract that it included in the "2016 CEO Performance Objectives" a requirement that he find a way to reduce the traffic to Free Conferencing conferences. The "Financial" section of "CEO Performance Objectives" contained this directive to CEO Carter:

- **FINANCIAL**
 - Achieve 2016 base budget plan approved by Board:
 - i. Revenue of \$384.3MM, EBITDA of \$90.2MM and FCF of \$63.SMM.
 - Implement robust data analytic tools to improve pricing and margin optimization.
 - i. **Reduce impact of Free Conference Call high destination costs from 14.5% of total TMO traffic to exit rate for the year of 6.5%**

- ii. Improve variable margin from current 2016 budget projection of 54.1% to 60.0%.

(Emphasis added.) The Board of Directors of Inteliquent, an intermediate carrier whose job is to connect the calls of T-Mobile customers, thus established a goal of reducing the number of calls made by T-Mobile customers – customers who should have been free to call any number or service they chose – to Free Conferencing conferences **by more than 50%.**

In an email on February 12, 2016, CEO Carter encouraged Inteliquent managers to find “alternative solutions” to address the problems created by its T-Mobile contract. The email stated this:

Matt Carter, Chief Executive Officer, 2/11/16, 2:24 p.m.:

As it relates to peering, I understand we have no direct control over this outcome. If TMO is going to potentially costs us \$6-\$9MM in EBITDA, what are the alternative solutions we are looking at to make up for this lost? I think we should at least identify, from the mundane to crazy hair ball ideas, how to chip away at this variance. This does not mean we will sign up as a commitment for low probability initiatives but I don't think we should accept as a given this outcome either.

A month later, while Inteliquent was attempting to negotiate a modification of its contract with T-Mobile, CEO Carter circulated to his staff an email he would be sending to Inteliquent’s Board concerning the options under discussion with T-Mobile. Those options included a plan to stop T-Mobile customers from using Free Conferencing’s services and stifle traffic to its conferences. It was essentially a call blocking scheme. This is the email that would be sent to the Board:

Matt Carter, Chief Executive Officer, 3/23/16, 1:20 p.m.:

[T]his is a quick update on our ongoing negotiations with TMO and other related EBITDA impacting activities.

Last week the team met with TMO to discuss options to improve the current high costs destination codes and understanding their timeline on peering. The options that are under consideration are:

- *Implement a cost+ model whereas we charge above the costs to protect ourselves from unprofitable traffic.*
- ***Limit the number of high destination codes by 50 % by TMO cutting off the first minute of this traffic. The goal would be to eventually eliminate as much as 80% by forcing those calls to listen to a recording asking for a credit card to continue the call.***

- *Give us their 800 traffic with no spiff. This is an option from their perspective to help make up some of the unprofitable traffic.*

We also discussed their intentions around peering. They made it perfectly clear they want to accelerate their peering relationships. TMO is working with Verizon but indicated to us that they don't expect it to move as quickly as we had initially perceived. We could see an acceleration late 2017-2018.

TMO is very aligned with us in finding a profitable solution. Our deliberations continue and we hope to have some resolution in the next few weeks. We have seen some improvement in the numbers with TMO since our last Board meeting in the tunes of \$2MM. We will provide a more robust update at the April Board meeting. If you have any questions, please do not hesitate to reach out. (Emphasis added.)

On March 29, 2016, a Senior Vice President at Inteliquent informed T-Mobile by email that Inteliquent was making progress in developing “strategies/initiatives” to stifle traffic to stifle traffic to Free Conferencing conferences and prevent T-Mobile customers from using the voice services of their choice.

Ian Neale, Senior Vice President, Product, 3/29/16, 3:19 p.m.:

[A]s I discussed with [Mike Taylor of T-Mobile] on Friday, we are currently developing a series of strategies/initiatives to more aggressively work with you all to contain the volume of traffic to high costs codes, we plan to have a document finalized that we can share with you both early next week. I am confident that we will bring much more focus to this issue going forward and I am sure that our collaborative efforts will yield a reduction in volume to these codes....

On April 8, 2016, Inteliquent sent T-Mobile a PowerPoint presentation entitled “T-Mobile High Cost Destination Analysis.” That presentation concluded with these “Recommendations:”

Recommendations

- *T-Mobile lowers the long call duration threshold below 4 hours. Can T-Mobile lower this for traffic to identified high cost codes only?*
- *On all traffic to high cost codes, T-Mobile or Inteliquent inserts a whisper message warning the caller and forcing them to enter a digit before the call is allowed to go through.*
- *On all traffic to high cost codes, T-Mobile inserts a whisper message that the number is not in the callers calling plan, advising that a transactional per min rate will apply, redirecting the call so that the callers credit card details can be entered before the call is completed.*

- *T-Mobile considers not offering service to the access stimulation abusers who only dial high cost codes and few or no other destinations.*
- **T-Mobile creates a high cost destination pricing plan.**
- *Notify the biggest access stimulation abusers with more than 100 minutes of usage that they will be switched to a higher cost destination plan because of their calling profile... (Emphasis added.)*

At the time, Inteliquent was recommending that T-Mobile insert a “whisper message” telling callers their number was not in the caller’s calling plan, T-Mobile was aggressively marketing its plans as providing unlimited talk, text, and data. At that time, its Terms of Service contained no disclosure that certain numbers would be excluded from its unlimited service plans.

Inteliquent and T-Mobile did in fact launch a program which inserted a whisper message into calls to certain Free Conferencing numbers. This message required a caller to press two digits to continue the call. The whisper message was confusing to the caller, and in particular made no sense to foreign language callers, many of whom simply hung up. Inteliquent and T-Mobile promoted this program as a way to combat “fraud,” but in reality, it was discriminatory and suppressed real calls in an apparent violation of the Communications Act provisions ensuring non-discriminatory service to all Americans, dialing parity between providers, and other key requirements. After Free Conferencing, as well as a number of other affected consumers, made complaints about this program, including threatening legal action, the program was suspended. During the time it was in place, it suppressed a substantial percentage of traffic.

On August 11, 2016, Inteliquent prepared a PowerPoint presentation for a meeting with T-Mobile. That presentation included a page on how Inteliquent would make the T-Mobile deal profitable by making 80% of the volume of T-Mobile calls to Free Conferencing “**disappear.**” Again, Inteliquent’s goal was to get T-Mobile customers not to make certain calls. This is that page:

Positive Future with minimal FCC traffic?

- ▶ T-Mobile is going to meter the traffic
 - ▶ Similar to checking the “I’m not a robot” button
- ▶ 80 % of our volume to FCC destinations is expected to disappear
- ▶ T-Mobile Deal will become profitable

On or about October 1, 2016, the plan pursued by Inteliquent for stifling calls of T-Mobile customers went into effect. T-Mobile customers attempting to reach Free Conferencing conferences encounter a recorded message that states they have called a number that is not covered by their plan and that they can avoid a 1-cent per minute charge by hanging up. As is clear from the Inteliquent communications with T-Mobile, the purpose of the 1-cent message is to reduce the traffic – *i.e.* block calls from users with unlimited plans – and not to raise money with a 1-cent per minute charge.

When the blocking message started, Inteliquent was in the midst of negotiations that would lead to the execution on November 16, 2016, of an Agreement and Plan of Merger with Onvoy, LLC. That Merger Agreement would lead to the purchase at a premium of the publicly owned shares of Inteliquent. The improvement of the “T-Mobile margin” through the stifling/blocking of traffic was a material issue in that transaction. In an email on October 17, 2016, the investment banker on the transaction reported this:

*In a recent conversation, [former CEO of Onvoy and current CEO of Inteliquent] was told that there will be a material improvement in the T-Mobile margin in 4th quarter because **T-Mobile has agreed to block the calls to the conference bridges.** (Emphasis added.)*

The 1-cent message has had the effect Inteliquent intended. T-Mobile users, despite having plans they understood to be unlimited talk, text, and data, have been coerced into hanging up when calling Free Conferencing conferences.

3. Free Conferencing’s And HD Tandem’s Efforts To Identify And Address Fraudulent Traffic.

In mid-late 2015, Free Conferencing and HD Tandem began to implement new and more sophisticated fraud detection tools to combat the call completion issues plaguing calls to their network. These tools searched for spoofed calls, calls with manipulated ANI, calls transmitted through SIMs boxes and hacked PBX’s, and calls that were not transmitted in accordance with applicable regulations and best practices. Free Conferencing and HD Tandem received increasing customer complaints for call connection issues and were committing to uncovering the bad actors and devising tools and tactics to stop their conduct.

HD Tandem and Free Conferencing’s capabilities are often the first line of defense against call completion issues, particularly as they work in conjunction with the rural CLECs with whom they collaborate. When Free Conferencing and HD Tandem launched these tools, the results of Free Conferencing’s analysis were truly remarkable and staggering in their anti-consumer effects. Among other things, Free Conferencing found significant fraudulent routing of calls made by Comcast customers. Free Conferencing was able to determine through complex analyses that a significant

number of Comcast customer's calls were transmitted onto T-Mobile's network for connection through improper routing via SIMs boxes.

The use of SIMS cards create phantom traffic from which carriers profit. For example, in analyzing one of the spoofed, re-originated calling number generated by the T-Mobile SIM card, it appears that a single SIM card generated over 200 calls per day, 1200 minutes per call, for an average of 7 hours per day. That single SIM card created 21 hour of calls in a three-day period. Free Conferencing ultimately filed and resolved a lawsuit against Comcast related to some of these issues. That suit, coupled with Free Conferencing's technical ability to conduct such an analysis, helped stop this particular instance of fraud.

Since Free Conferencing and HD Tandem began to use these new fraud detection and prevention tools, they have identified and reported fraud routing to IXC's almost daily. Consistently since 2015, Free Conferencing reported to Inteliquent (and T-Mobile) the fraudulent routing methods used to connect T-Mobile customers' calls. T-Mobile has publicly touted Inteliquent's ability to provide fraud detection and prevention methods but Inteliquent has ignored undeniable proof of fraud when it impacts Free Conferencing callers.

In addition to the use of SIMs boxes, bad actors hack and route calls through private branch exchanges or PBXs. In this scenario, the T-Mobile call is transmitted through a private phone system, PBX, that is hosted by another provider, before it is routed to the Free Conferencing conference. This practice significantly harms the retail customers making the calls, as well as Free Conferencing's business. When calls are routed through hacked PBXs, the call features Free Conferencing provides to its customers are disabled and the call quality is significantly degraded -- if the call is connected at all.

One type of fraudulent call routing is particularly concerning. In mid-2017, Free Conferencing was contacted by a call data center in New Jersey that realized that its PBX had been hacked and that thousands of T-Mobile customers' calls destined to Free Conferencing conferences were being routed through its PBX. A division of Inteliquent called Vitelity hosts the hacked PBX. The calls that were connected in this manner were recorded without the callers' knowledge, because the New Jersey call center's PBX was set up to record calls for training purposes and ordinary calls to that data center played a recording notifying callers of this practice. However, when a call to a Free Conferencing conference was routed improperly through the hacked PBX, callers did not receive notice of the recording. The New Jersey call center also incurred damage for this hacking, including congested lines and severe business disruption. Worse still, the New Jersey call center was charged for the connection of these hacked calls to Free Conferencing conferences, and Inteliquent's Vitelity division refused even to refund the call center in full for the calls that were made by the hacker.

Through internal investigation and this litigation, Free Conferencing has learned of at least 500 hackings in only a three-month period in 2017. In many instances, Inteliquent/Vitelity hosted the PBX that was hacked, and the hacked party suffered damage similar to that of the New Jersey call center in the example above. Small businesses all over the country had been effected and the story is the same - a business with many incoming calls but few outgoing calls (e.g., a call center, a doctor's office, a retail store) notice a very high monthly invoice from its PBX host provider, usually Inteliquent/Vitelity. After investigation of call detail records and significant interruption to their business, the business comes to realize that its system was hacked. The PBX is often shut down or changed such that the hacking ceases after a few months, but Inteliquent/Vitelity refuses to reimburse the business for the charges connecting the calls through the hacking. Moreover, in all those instances, thousands of calls to Free Conferencing conferences are frustrated or interfered with.

Free Conferencing reported these instances of PBX hacking to Inteliquent (as its subsidiary hosts many of the PBXs that are hacked) which completely ignored this issue. Free Conferencing was not provided a response; Inteliquent did not conduct an investigation; and Inteliquent operations or business personnel did not contact Free Conferencing. It appears that Inteliquent does not care to resolve the fraud and call connection issues as long as the calls are destined to Free Conferencing conferences.

It is apparent in Inteliquent's internal emails that Inteliquent aimed to use intermediate carriers, regardless of the practices they employed, to reduce the costs of complying with its obligations under its T-Mobile contract. On February 10, 2016, senior executives at Inteliquent met with representatives of ANI Networks. According to an internal Inteliquent email summarizing that meeting, Inteliquent had "concern about the cost exposure associated with FCC [Free Conferencing Corporation] codes, and [ANI Networks] appeared very willing to try and help mutually resolve." Inteliquent and ANI discussed the "alternative routes" ANI uses "to have leverage over" Free Conferencing. They also discussed the alternative routes that Comcast was using, which were uncovered later by Free Conferencing through litigation discussed above, as well as "bypass schemes" and other "alternative routes" including "SIM bypass, leaky PBX and stale routes."

Inteliquent's notes from the February 10 meeting demonstrate how IXC's and intermediate carriers like Inteliquent, under the cloak of using multiple downstream providers, knowingly foster fraud in routing as a means of cost-shifting. Free Conferencing is raising these facts and incorporating them into this docket because of its strongly held belief that the rules that the Commission must ultimately put in place in this proceeding must address these scenarios for rural consumers as well as all Americans who are connected to the PSTN.

Free Conferencing has confronted many other instances of IXCs refusing to investigate, resolve or cooperate with Free Conferencing's efforts to combat fraud or simply shifting blame downstream. Free Conferencing and HD Tandem continually face a culture among carriers that as long as the calls are destined to a Free Conferencing conference, standards of quality and compliance with the law can be lax -- as if the millions of American consumers, businesses, schools, churches, and other institutions who use its conferences do not matter. Carriers must be held to the same standards, no matter where the call is being connected, no matter whom the call is being connected to. The Communications Act requires no less.

Respectfully submitted,

/s/ Stephen Wald

Stephen Wald